

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

KAYLA FLEMING,

Plaintiff,

V.

RRE SANTA ROSA HOLDINGS LLC,

Defendant.

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No. 3:24-cv-1081-B-BN

**FINDINGS, CONCLUSIONS, AND RECOMMENDATION OF THE  
UNITED STATES MAGISTRATE JUDGE**

Plaintiff Kayla Fleming filed a *pro se* complaint against Defendant RRE Santa Rosa Holdings LLC (“RRE”), alleging that RRE “is illegally requesting a species of payment for unpaid rents” because it has not accepted her “negotiable instruments” and that RRE has “unlawfully retaliated by filing eviction after notice was sent.” Dkt. No. 3 at 1; *see also id.* at 2 (“Due to me having to go to court more than 5 times about unpaid rents. I loss my place of employment & I’m being injured. Form 56 was also sent to the Internal Revenue Service to revoke [their] fiduciary obligations. The company is committing banking fraud by attempting to seal my mailbox. They sent the eviction petition over electronically. There is no way to tell who sent over these forms that is robo signing & it’s a cybercrime. They are using my estate as they wish without the consent of the rightful owner. They are claiming to be the landlord of set property that legally they have no rights [to].”).

United States District Judge Jane J. Boyle referred the complaint to the undersigned United States magistrate judge for screening under 28 U.S.C. § 636(b)

and a standing order of reference.

After reviewing the complaint, the undersigned questions whether there is subject matter jurisdiction and, given the circumstances of this case, enters these findings of fact, conclusions of law, and recommendation that the Court should dismiss this action for lack of subject matter jurisdiction and issue an appropriate sanctions warning.

These findings and conclusions provide Fleming notice as to the jurisdictional deficiencies. And the ability to file objections to the undersigned's recommendation that this case be dismissed for lack of jurisdiction (as further explained below) offers Fleming an opportunity to establish (if possible) that the Court does have subject matter jurisdiction.

### **Legal Standards**

“Jurisdiction is the power to say what the law is.” *United States v. Willis*, 76 F.4th 467, 479 (5th Cir. 2023). So consideration of “[j]urisdiction is always first.” *Louisiana v. U.S. Dep’t of Energy*, 90 F.4th 461, 466 (5th Cir. 2024) (citation omitted).

And, because “[f]ederal courts are courts of limited jurisdiction,’ possessing ‘only that power authorized by Constitution and statute,’” *Gunn v. Minton*, 568 U.S. 251, 256 (2013) (quoting *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994)), “subject-matter delineations must be policed by the courts on their own initiative even at the highest level,” *Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574, 583-84 (1999) (citations omitted).

Fleming chose to file this lawsuit in federal court and, by doing so, undertook

the burden to establish federal jurisdiction. *See St. Paul Reinsurance Co. v. Greenberg*, 134 F.3d 1250, 1253 (5th Cir. 1998) (“The burden of establishing subject matter jurisdiction in federal court rests on the party seeking to invoke it.” (cleaned up)); *Butler v. Dall. Area Rapid Transit*, 762 F. App’x 193, 194 (5th Cir. 2019) (per curiam) (“Assertions that are conclusory are insufficient to support an attempt to establish subject-matter jurisdiction.” (cleaned up)).

And, if the party invoking federal jurisdiction fails to establish it, the lawsuit must be dismissed. *See* FED. R. CIV. P. 12(h)(3) (“If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action.”).

Because federal jurisdiction is not assumed, “the basis upon which jurisdiction depends must be alleged affirmatively and distinctly and cannot be established argumentatively or by mere inference.” *Getty Oil Corp. v. Ins. Co. of N.A.*, 841 F.2d 1254, 1259 (5th Cir. 1988) (citing *Ill. Cent. Gulf R. Co. v. Pargas, Inc.*, 706 F.2d 633, 636 & n.2 (5th Cir. 1983)); *see also MidCap Media Fin., L.L.C. v. Pathway Data, Inc.*, 929 F.3d 310, 313 (5th Cir. 2019) (“Because federal courts have limited jurisdiction, parties must make ‘clear, distinct, and precise affirmative jurisdictional allegations’ in their pleadings.” (quoting *Getty Oil*, 841 F.2d at 1259)).

Under their limited jurisdiction, federal courts generally may only hear a case if it involves a question of federal law or where diversity of citizenship exists between the parties. *See* 28 U.S.C. §§ 1331, 1332.

In cases invoking jurisdiction under Section 1332, each plaintiff’s citizenship must be diverse from each defendant’s citizenship, and the amount in controversy

must exceed \$75,000. *See* 28 U.S.C. § 1332(a), (b). This amount “is determined by the amount of damages or the value of the property that is the subject of the action.” *Celestine v. TransWood, Inc.*, 467 F. App’x 317, 319 (5th Cir. 2012) (per curiam) (citing *Hunt v. Wash. State Apple Adver. Comm’n*, 432 U.S. 333, 347 (1977)).

And, “[f]or diversity purposes, state citizenship is synonymous with domicile. A change in domicile requires: ‘(1) physical presence at the new location and (2) an intention to remain there indefinitely.’” *Dos Santos v. Belmere Ltd. P’ship*, 516 F. App’x 401, 403 (5th Cir. 2013) (per curiam) (citations omitted); *see also Preston v. Tenet Healthsystem Mem’l Med. Ctr.*, 485 F.3d 793, 797-98 (5th Cir. 2007) (“In determining diversity jurisdiction, the state where someone establishes his domicile serves a dual function as his state of citizenship.... Domicile requires the demonstration of two factors: residence and the intention to remain.” (citing *Stine v. Moore*, 213 F.2d 446, 448 (5th Cir. 1954))); *SXSW v. Fed. Ins. Co.*, 83 F.4th 405, 407 (5th Cir. 2023) (“‘The difference between *citizenship* and *residency* is a frequent source of confusion.’ For natural persons, § 1332 citizenship is determined by domicile, which requires residency plus an intent to make the place of residency one’s permanent home. An allegation of residency alone ‘does not satisfy the requirement of an allegation of citizenship.’” (emphasis in original; citations omitted)).

“The basis for diversity jurisdiction must be ‘distinctly and affirmatively alleged.’” *Dos Santos*, 516 F. App’x at 403 (quoting *Mullins v. TestAmerica, Inc.*, 564 F.3d 386, 397 (5th Cir. 2009)). And “a ‘failure to adequately allege the basis for diversity jurisdiction mandates dismissal.’” *Id.* (quoting *Stafford v. Mobil Oil Corp.*,

945 F.2d 803, 805 (5th Cir. 1991)).

Under Section 1331, federal question jurisdiction “exists when ‘a well-pleaded complaint establishes either that federal law creates the cause of action or that the plaintiff’s right to relief necessarily depends on resolution of a substantial question of federal law.’” *Borden v. Allstate Ins. Co.*, 589 F.3d 168, 172 (5th Cir. 2009) (quoting *Franchise Tax Bd. v. Constr. Laborers Vacation Tr.*, 463 U.S. 1, 27-28 (1983)); *see also In re Hot-Hed Inc.*, 477 F.3d 320, 323 (5th Cir. 2007) (“A federal question exists ‘if there appears on the face of the complaint some substantial, disputed question of federal law.’” (quoting *Carpenter v. Wichita Falls Indep. Sch. Dist.*, 44 F.3d 362, 366 (5th Cir. 1995))).

The “creation’ test ... accounts for the vast bulk of suits under federal law.” *Gunn*, 568 U.S. at 257 (citation omitted). But

“a federal court [is also] able to hear claims recognized under state law that nonetheless turn on substantial questions of federal law, and thus justify resort to the experience, solicitude, and hope of uniformity that a federal forum offers on federal issues.” That is to say, “federal jurisdiction over a state law claim will lie if a federal issue is: (1) necessarily raised, (2) actually disputed, (3) substantial, and (4) capable of resolution in federal court without disrupting the federal-state balance approved by Congress.”

*Perez v. Se. SNF, L.L.C.*, No. 21-50399, 2022 WL 987187, at \*3 (5th Cir. Mar. 31, 2022) (per curiam) (quoting *Grable & Sons Metal Prods., Inc. v. Darue Eng’g & Mfg.*, 545 U.S. 308, 312 (2005), then *Gunn*, 568 U.S. at 258).

### Analysis

Regardless of any merit, Fleming’s allegations fail to include facts that could show – or from which the Court may infer – that a federal statute was violated or

that resolution of a claim made here turns on “a substantial question of federal law.” *Borden*, 589 F.3d at 172. So Fleming fails to establish federal question jurisdiction under Section 1331.

Nor has diversity jurisdiction under Section 1332 been established where (1) Fleming fails to properly allege the citizenships of the parties; (2) the complaint raises a plausible inference that each plaintiff’s citizenship may not be diverse from each defendant’s; and (3), while Fleming seeks more than \$1 million based on an allegedly wrongful eviction, there are no factual allegations to show that this amount is pled in good faith.

The undersigned makes this last finding because the Court is “entitled to consider sua sponte whether the jurisdictional amount in controversy requirement had been fulfilled.” *Mitchell v. Metro. Life Ins. Co.*, 993 F.2d 1544, 1993 WL 185792, at \*2 n.3 (5th Cir. 1993); *see also United States v. Lee*, 966 F.3d 310, 320 n.3 (5th Cir. 2020) (“Unpublished decisions issued before 1996 are binding precedent. 5TH CIR. R. 47.5.3.”).

As to the amount of damages pled here, “[w]hen a plaintiff invokes federal-court jurisdiction, the plaintiff’s amount-in-controversy allegation is accepted if made in good faith.” *Dart Cherokee Basin Operating Co., LLC v. Owens*, 574 U.S. 81, 87 (2014). More specifically, “unless the law gives a different rule, the sum claimed by the plaintiff controls if the claim is apparently made in good faith.” *Greenberg*, 134 F.3d at 1253 (cleaned up).

But, “[a]lthough a district court should generally accept a plaintiff’s good faith

statement regarding an amount in controversy, a plaintiff invoking jurisdiction still has ‘the burden of alleging with sufficient particularity the facts creating jurisdiction and of supporting the allegation if challenged.’” *Fuller v. Hibernia Oil*, No. 21-20324, 2022 WL 17582275, at \*1 (5th Cir. Dec. 12, 2022) (per curiam) (cleaned up; quoting *Diefenthal v. C.A.B.*, 681 F.2d 1039, 1052 (5th Cir. 1982)); accord *Celestine*, 467 F. App’x at 319-20 (“While a federal court must of course give due credit to the good faith claims of the plaintiff, a court would be remiss in its obligations if it accepted every claim of damages at face value, no matter how trivial the underlying injury. This is especially so when, after jurisdiction has been challenged, a party has failed to specify the factual basis of his claims. Jurisdiction is not conferred by the stroke of a lawyer’s pen. When challenged, it must be adequately founded in fact.” (quoting *Diefenthal*, 681 F.2d at 1052)).

If a plaintiff pleads a specific or determinate amount of damages, “[t]o justify dismissal, it must appear to a legal certainty that the claim is really for less than the jurisdictional amount.” *Greenberg*, 134 F.3d at 1253 (cleaned up). When the amount in controversy is challenged under these circumstances, the plaintiff “must show that it does not appear to a legal certainty that its claim is for less than the jurisdictional amount.” *Bloom v. Depository Tr. Co.*, 136 F.3d 1328, 1998 WL 44542, at \*1 (5th Cir. Jan. 26, 1998) (per curiam) (cleaned up).

Fleming fails to allege with sufficient particularity the facts creating jurisdiction (that is, facts from which the Court can infer that damages exceed the minimum amount in controversy, much less exceed \$1 million). But the opportunity

to file objections (as further explained below) affords Fleming an opportunity to show that it does not appear to a legal certainty that the claims in this lawsuit amount to less than the jurisdictional amount. And, if Fleming fails to do so, that is another reason why this lawsuit should be dismissed for lack of subject matter jurisdiction.

### **Recommendation**

The Court should dismiss this lawsuit for lack of subject matter jurisdiction.

A copy of these findings, conclusions, and recommendation shall be served on all parties in the manner provided by law. Any party who objects to any part of these findings, conclusions, and recommendation must file specific written objections within 14 days after being served with a copy. *See* 28 U.S.C. § 636(b)(1); FED. R. CIV. P. 72(b). In order to be specific, an objection must identify the specific finding or recommendation to which objection is made, state the basis for the objection, and specify the place in the magistrate judge's findings, conclusions, and recommendation where the disputed determination is found. An objection that merely incorporates by reference or refers to the briefing before the magistrate judge is not specific. Failure to file specific written objections will bar the aggrieved party from appealing the factual findings and legal conclusions of the magistrate judge that are accepted or adopted by the district court, except upon grounds of plain error. *See Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1417 (5th Cir. 1996).

DATED: May 7, 2024

A handwritten signature in black ink, appearing to read 'D. Horan', is written over a horizontal line.

DAVID L. HORAN  
UNITED STATES MAGISTRATE JUDGE